IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12954 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHWARY HANDLING AGENCY PVT.LTD. & 1 - Petitioner(s)
Versus
BOARD OF TRUSTEES OF THE KANDLA PORT TRUST & 1 - Respondent(s)

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Appearance :

MR DC DAVE for Petitioner(s) : 1 - 2.
MR SN SHELAT SR. ADVOCATE WITH MR ALPESH RAJPURIYA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/06/2007

ORAL JUDGMENT

1. The petitioners have in the present petition challenged a circular dated 31st August, 1998,

issued by the Traffic Manager, Kandla Port Trust by which essentially it is decided not to allow storage of cargoes at Kandla Port for more than two months.

2. Shortly stated facts leading to the petition are as follows :-

2.1 The petitioner no.1 herein is a private limited Company who is an agent dealing in the work of clearing, forwarding and transporting of goods meant for import and export. The petitioner no.2 is the Chairman of the petitioner no.1 company. The petitioners in course of their business activities require to store cargoes both meant for import as well as export till berthing of the Ship for imported cargoes and the availability of the Ship for export of cargoes, is available. For the said purpose, petitioners require storage facility within the port area where such import export activities are being carried on. Since the petitioners' main business is concentrated at Kandla Port, the petitioners require such space at Kandla Port.

2.2 Respondent no.1 is the Board of trustees of the Kanlda Port Trust (KPT for short). Respondent no.2 is the Traffic Manager of KPT. KPT besides other activities also provides storage space at the Port for the

purpose of storing goods meant for export or goods which have just been imported. Such storage space is made available to different agencies by leasing out open plots or sheds. Under the provisions of the Major Port Trusts Act, 1963 (here-in-after referred to as “the said Act”), KPT enjoys a certain degree of monopoly in providing such space and insisting that goods be stored only at the space so made available by it. For the purpose of collection of rent for the space so leased out by KPT, certain terms and conditions have been prescribed from time to time.

2.3 The said Act prior to 1997 provided that scale of rates and conditions have to be formed by the Board of KPT and submitted to the Central Government for sanction and upon such sanction and after publication thereof by the Board in Official Gazette, such scale of rates and conditions would become effective. It is the case of the petitioners and about which there is no serious dispute that prior to 1997, KPT had prescribed through a Notification certain rates of rental charges to be recovered from the agencies storing their goods in the space so leased out by KPT. The Notification also contained 'Notes' laying down the conditions for leasing out the space. The petitioners have produced at Annexure-A to the petition relevant portion of the said Notification, the specifying

rates and conditions for lease.

2.4 A brief look at the Notification Annexure-A produced by the petitioners would reveal that KPT had prescribed separate rates for open space and for covered space and further prescribed different rates for a lease for a period upto three months and period beyond three months. It is not necessary for the purpose of this petition to go into further details of different rates for other sub-categories of space provided by KPT. The rental facility was to be enjoyed by the agencies on certain terms and conditions specified in the 'Notes' provided in the Notification annexure 'A'. Conditions nos. 1, 5 and 6 are relevant for the purpose of this petition which read as follows:

“1) Application for rental space should be made before storage of goods to the Traffic Manager. Any unauthorised occupation of rented spaces shall be liable for payment of double the rent as a penalty.

5) The space alloted should be vacated on notice from the Traffic Manager or other officer on his behalf failing which it will be treated as unauthorised occupation liable for penalty rent under note-1.

6) The Traffic Manager shall have the right to take over the spaces, alloted on rental basis, which are unoccupied/empty without any prior notice in the interest of the port operation, in such cases, proportionate reduction in rent shall be allowed at the discretion of the T.M.”

2.5 The said Act was amended in the year 1997. Significant amendments were introduced by Chapter V-A to the said Act whereby provisions were made for constitution of Tariff Authority for major ports. Section 49 of the said Act after amendment provided inter-alia that the Tariff Authority shall frame a scale of rates on payment of which and statements of conditions under which any property belonging to the Port may be used for the purpose of leasing of land or sheds by the owner of goods imported or intended for export or by steamer agents.

2.6 The above amendments were introduced in the said Act with effect from 9.1.1997.

2.7 On 31st August, 1998, the Traffic Manager of KPT i.e. respondent no.2 herein issued a circular which is subject matter of the present litigation. In the said circular, it is stated inter-alia that due to over staying of cargoes inside the Port, the Port is getting congested causing inconvenience to both import/export cargoes which may ultimately result in diversion of traffic from the Port. To overcome this problem, it has been decided not to store cargoes for more than two months. It is further stated that no renewals would be considered for areas alloted on rental/warehousing terms if the stay is for more than sixty days. This decision was brought into

effect from 1st October, 1998.

2.8 It is this circular which the petitioners have challenged in this petition. Broadly stated, the case of the petitioners is that after the amendment in the said Act in 1997, it is only the Tariff Authority which could prescribe rates for renting storage space and Traffic Manager of KPT had no authority to change the existing structure of the rates prescribed by the Board.

3. Before taking note of and dealing with rival contentions, it would be useful to notice some of the statutory provisions.

3.1 Prior to amendment in the said Act in 1997, Section 52 read as follows :

"... Every scale of rates and every statement of conditions framed by a Board under the foregoing provisions of this Chapter shall be submitted to the Central Government for sanction and shall have effect when so sanctioned and published b the Board in the Official Gazette.

3.2 It may be noted that said provision came to be deleted by the Amending Act, 1997.

3.3 Section 2(aa) in the said Act was added by Amending Act 1997. Section 2(aa) reads as follows :

""Authority" means the Tariff Authority for

Major Ports constituted under Section 47-A”

3.4 Section 47A of the said Act provides for constitution and incorporation of Tariff Authority for major ports. Sub-section(1) thereof provides inter-alia for constitution by notification in official gazette by Central Government of Tariff Authority for Major Ports.

3.5 Section 49 of the said Act provides for scale of rates and statement of conditions for use of property belonging to the Board. Section 49 reads as follows :

“(1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:-

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;
(d) any other use of any land, building, workds, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be

framed for different classes of goods and vessels.

(3) Notwithstanding anything contained in sub-section(1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section(1).”

3.6 Section 49A of the said Act further empowers the Tariff Authority to fix rates for fees that may be charged for pilotage, hauling, mooring,etc. and other services rendered to vessels within any port.

3.7 Section 49B of the said Act empowers authority to fix port-dues on vessels entering the port.

4. On the basis of above factual background and statutory provisions noted here-in-above, it is the case of the petitioners that KPT having earlier prescribed certain rates for lease of its storage space, and also having provided for terms and conditions for use of such space, it was not open for the Traffic Manager to modify either the rates or terms and conditions thereof.

5. Learned advocate Shri D.C. Dave for the petitioners vehemently submitted that after the amendment in the said Act in 1997, any change in the rate of rental or any change in the terms

and conditions for enjoyment of such storage space could have been affected only by the Tariff Authority and none else. It was pointed out that in the rates prescribed by KPT vide Annexure-A, there was no upper limit for the period for which goods could have been stored by the owner thereof. It was submitted that by the impugned notification, the Traffic Manager provided for a maximum period of 60 days for storage of goods beyond which such goods were deemed to be stored unauthorisedly. It was submitted that the Traffic Manager lacked competence to issue such circular since essentially the circular tampers with the condition for storage of goods prescribed by the Board. It was further submitted that after the amendment in the Act in the year 1997, the Tariff Authority was given sole authority to prescribe fresh rates and to lay down terms and conditions for use of storage space. In this regard it was submitted that even prior to amendment in the Act in the year 1997, the rates of rental and terms and conditions were to be finalised by the Board with the sanction of the Central Government. It was therefore, submitted that under no circumstances the Traffic Manager could have issued the circular which had the effect of drastically increasing the rate for rental of the storage space. Learned advocate drew my attention to the rates prescribed vide Annexure-A wherein for the first three months of

rental, separate rates are prescribed both for open as well as covered space where as higher rates are prescribed for both categories of storage after initial period of three months. He therefore, submitted that the Traffic Manager while providing that beyond period of 60 days, goods shall be treated as unauthorisedly stored(and therefore, invite penal rate for storage), essentially modified the rental charges and provided for much steeper rental charges after period of 60 days.

6. On the other hand, learned senior advocate Shri S.N. Shelat appearing for Shri Rajpuria for the respondents submitted that respondent no.2 i.e. the Traffic Manager of KPT was well within his power to issue circular in question. It was submitted that the Traffic Manager has the power to control and regulate the cargo movement to ensure that there is no congestion at the Port. It was submitted that as per conditions nos.1 and 5 of the circular at Annexure-A also, the Traffic Manager is empowered to deal with the applications for rental of space and to allot space as per its availability. It was submitted that all that the Traffic Manager has done is to provide for a uniform policy for not providing space to any owner of the goods (or the agent) beyond a period of 60 days. This was done to ensure that there is no congestion at the Port, failing which, there was every possibility of

cargo traffic being diverted to other Ports. In addition to drawing my attention to conditions nos. 1 and 5 contained in circular Annexure-A, my attention was also drawn to Regulations 64 and 128 of Kandla Port Regulations 1967(here-in-after referred to as “the said regulations”). As pointed out by learned counsel for the respondents, Section 123 of the said Act empowers the Board to make regulation consistent with the Act for certain purposes including for reception, porterage, storage and removal of goods brought withing the premises of the Board.

7. Regulation 64 of the said regulations reads as follows :

“64. Work in Port under the control of Traffic Manager :
The loading and unloading of vessels shall be subject to the control of the Traffic Manager, who may at his discretion, prohibit the discharge of such goods which in his opinion are likely to obstruct traffic or cause congestion or hinder the convenient use of the berths.

Notwithstanding the provisions of Regulation No.113 the Traffic Manager may at his discretion, also remove to the other areas as under his jurisdiction, any goods upon landing in the Port or soon thereafter, the storage of which on Port premises is likely to obstruct traffic or cause congestion. The apportionment of quay space to be occupied by each vessel shall similarly be determined by the Traffic Manager.

7.1 Regulation 128 of the said regulation reads as follows :

> “128 Quays, etc. to be under the authority of the Traffic Manager:
> The quays, sheds, gates and the land within the Port boundaries shall be in th charge of the Traffic Manager who shall direct and manage all operations connected with the landing and shipping of goods, and with their storage in the shed and in the open. He shall have proper custody of all goods lying in the Port and taken whatever steps he may consider necessary for the proper maintenance of order. “

8. On the basis of said provisions, it was submitted that the Traffic Manager of the KPT had to control the traffic movement at the Port and to ensure that there was no congestion. It was submitted that with the said purpose in mind when it was found that storage space is short, in order to avoid congestion of goods and to ensure that traffic is not diverted to other Ports, the Traffic Manager had taken conscious decision not to permit the storage of goods beyond 60 days.

9. Before dealing with the rival submissions, it may be noted that the impugned circular came to be withdrawn by the respondents with effect from 29th January, 2001 and a formal circular in this regard was issued by respondent no.2 on 22nd June, 2001, a copy of which is made available by the respondents which is taken on record. From the perusal of the said circular dated 22nd June, 2001, it can be seen that the Tariff Authority had prescribed fresh rates of rental charges with effect from 29th January, 2001 and that

therefore, from the said date, impugned circular came to be withdrawn. It can thus be seen that the impugned circular operated for a period between 1st October 1998 and 29th January, 2001. It is not in dispute that during the said period, Tariff Authority had not prescribed any rates for collection of rental charges for respondent no.1 Board. It is thus an admitted position that during the said period when the impugned circular was in operation, the rates prescribed vide Notification Annexure-A held the field. In other words,the Tariff Authority had not prescribed fresh rates for rental charges at the time when the impugned circular was operative.

10. In view of the controversy between the parties noted here-in-above, short question is whether the Traffic Manager had competence to issue the impugned circular. The purpose or reasons for issuance of such a circular is neither being seriously questioned nor is possible to find fault with. The circular itself records that due to shortage of space at Kandla Port, storage of cargoes for longer period is causing inconvenience and there is real possibility of diversion of traffic from Kandla Port. To overcome these difficulties, the Traffic Manager decided to implement a uniform policy of storing cargoes for maximum period of 60 days. Short question is whether in face of circular

Annexure-A and in view of statutory amendment in the year 1997, respondent no.2 was authorised to issue such a circular.

11. First and foremost as noted earlier, Tariff Authority had not made any prescription for fresh rates of recovery of rental charges till 29th January, 2001. On 31st August, 1998 when respondent no.2 issued the impugned circular, rates were yet to be prescribed by the Tariff Authority as per the provisions of amended Act. Though the amendments were made in the said Act to constitute a Tariff Authority and empowering such Tariff Authority for prescription of rental charges as also conditions for such rentals, admittedly no such prescription was made by the Tariff Authority till 29th January, 2001.

12. In that view of the matter, in my view, circular issued by the Traffic Manager on 31st August, 1998 was not in any manner in conflict with any of the provisions made by the Tariff Authority for occupation of cargo space.

13. The contention of learned advocate for the petitioners that after amendments in the Act in the year 1997, only authority competent to prescribe fresh rates and conditions of rental of cargo space was the Tariff Authority and that therefore, respondent no.2 could not have issued the impugned circular, needs to be examined

simultaneously with his submission that essentially by way of issuance of impugned circular, respondent no.2 substantially modified Notification Annexure-A issued by the Board laying down terms and conditions for enjoyment of rental charges as also the prescribed rates of such rental charges.

14. Looking to the provisions contained in the said Regulations, it cannot be denied that the Traffic Manager is responsible for control of traffic and for movement of cargo within the premises of the Port.

15. Regulation 11 of the said Regulations provides that vessels arriving at the Port to discharge import cargo or to load cargo shall be berthed ordinarily in the order of arrivals. Regulation 12 of the said Regulations however, empowers the Traffic Manager with the permission of the Chairman to vary the order of precedence laid down in Regulation 11 for better use of Port and general interest of shipping and the Port. Regulation 14 of the said Regulations empowers the Traffic Manager to cause a vessel to move out of the berth if in his opinion the vessel is not making a proper use of the berth and the facilities on the quay. Regulation 64 of the said Regulations reproduced here-in-above inter-alia provides that the loading and unloading of vessels shall be subject to the control of the

Traffic Manager. Regulation 128 of the said Regulations inter-alia provides that the quays, sheds, gates and the land within the Port boundaries shall be in the charge of the Traffic Manager who shall direct and manage all operations connected with the landing and shipping of goods and with their shortage in the shed and in the open.

16. Condition no.1 in the Notification Annexure-A for rental of storing space requires an application to be made before storage of goods; to the Traffic Manager. Any unauthorised occupation of rented spaces is liable for payment of double the rent as penalty. Condition no.5 in the said Notification provides that the space allotted should be vacated on notice from the Traffic Manager failing which it shall be treated as unauthorised occupation and liable for penalty. Condition no.6 of the said Notification authorises the Traffic Manager to take over the spaces alloted on rental basis which is not occupied.

17. It can thus be seen that the Traffic Manager has important tasks to perform in connection with the handling of cargo of ship and movement of goods at the Port. Notification Annexure-A in addition to prescribing different rates for storage of space also provides that application has to be made to the Traffic Manager before

storing of goods. Conditions further provide that upon notice by the Traffic Manager for vacating the premises if the concerned person fails to do so, it shall be treated that space is unauthorisedly occupied. It can thus be seen that though Notification Annexure-A provides for different slabs of rates for different kinds of storing space and also provides for different rates upto maximum of three months and beyond the said period, leaves full discretion to the Traffic Manager to allot such space upon application being made by the owner of the goods or the agent. This would essentially mean that even within the Notification Annexure-A itself, the Tariff Manager had sufficient discretion to limit the storage time as per the prevailing conditions. Though Notification Annexure-A prescribed different rates upto period of three months and beyond the said period; that by itself would not imply that the owner of goods had vested right to occupy such space for unlimited period of time whether space was available or not. Combined reading of conditions contained in Notification Annexure-A and in particular conditions nos. 1 and 5 would show that even within said Notification, the Traffic Manager had the authority and discretion to regulate the applications for allotment of space on rent and such applications had to be considered as per the availability of space and pressure of the cargo being brought within the

Port premises for import or export. In that view of the matter, even without issuance of circular Annexure B, the Traffic Manager could have in individual cases limited the time for storage of goods upto a maximum of 60 days. All that is done by issuance of impugned circular at Annexure-B is laying down of uniform policy by the Traffic Manager looking to the congestion at the Port; since it was not possible to provide storing space beyond 60 days to any owner of the goods. The circular also provided that beyond the period of 60 days the occupation of the space will be treated as unauthorised. I am unable to upheld the contention of learned advocate for the petitioners that by issuing impugned circular Annexure-B, the Traffic Manager materially changed the terms and conditions laid down by Notification. This is so since essentially I find that the Traffic Manager by issuing circular Annexure B has done nothing beyond laying down a uniform policy for granting of storing space for a maximum period of 60 days which in any case was well within his power to do so either in general or in individual cases in exercise of power conferred on him vide Notification Annexure-A. As noted earlier, since the Traffic Manager discharges important function of regulating the traffic as well as movement of goods at the Port, his decision to limit the storage space for a maximum period of 60 days for the reasons

indicated in the impugned circular cannot be found fault with.

18. Under the circumstances, I find no merit in challenge. The petition is therefore, rejected. Rule is discharged.

(Akil Kureshi,J.)

(raghu)